

**Comments and Questions for Clarification of the Stipulated Award and Affected Code Sections for Tier 2 Ordinance for New San José Police Employees**

<b><u>AWARD PROVISION</u></b>	<b><u>COMMENTS, QUESTIONS</u></b>	<b><u>MUNI CODE REF.</u></b>	<b><u>CLARIFICATIONS AND ANSWERS</u></b>
<b>Final Compensation</b>	Clarify “base pay” and excluded “premium pay.”  For example, does “base pay” include any compensation for special skills, knowledge, abilities, work assignment, workdays and hours, or other work conditions?	3.36.020.3.H	“Base pay” is the pay that appears for the job classification/range; “premium pays” are listed in the POA MoA salary exhibit The items in the question are all “premium pays” and excluded
<b>Pension Calculation</b>	Will 65% of the FAC cap on pension grow with COLAs after the first year? Or will COLAs be suspended once the 65% limit is reached? (If so, this would be a significant change from how the Plan calculates the current 90% ceiling.)	3.36.807.D	The cap only applies to the initial retirement allowance. City may amend to clarify in subsequent technical amendments
<b>Age Eligibility</b>	Between ages 50 and 60, how is the actuary to calculate the reduced benefit?	3.36.750 3.36.807.D 3.36.809.B 3.36.810.F 3.36.1340 3.36.1640.I	The intent is to spread the expected benefit after retirement age 60 over the total expected years in retirement, so that no additional benefit is granted for early retirement before age 60
<b>COLA</b>	Will the COLA be subject to the emergency suspension provisions of Measure B? If so, consider cross-reference to Charter.	3.44.150.A.2	Yes. The cross-reference is 3.36.010.B

<b>Disability Retirements</b>	Will the definition of disability and the medical panel process be as stated in Measure B? If so, consider cross-reference to Charter.		Yes. The cross-reference is 3.36.010.B
<b>Survivorship Benefits</b>	<p>After death of surviving spouse/partner, how long will eligible children continue to receive the benefit?</p> <p>Does the child benefit have to be the actuarial equivalent of the balance of the spousal continuance, or some other calculation?</p>	3.36.1205	<p>The ordinance provides the child benefit continues until earlier of age 18 or marriage/domestic partnership</p> <p>No</p>
<b>Death Before Retirement</b>	Clarify “in the line of duty.” For example, if an officer is driving to or from work and is killed, is it “in the line of duty?”	3.36.1205	Means on duty and being paid. City believes this is understood by POA (not written in MoA or otherwise)
<b>Return of Contributions</b>	Does the return of contributions include interest? If so, at what rate (e.g., legal pre-judgment rate, legal post-judgment rate, assumed rate of return, other)?		Intended to include interest, same as Tier 1. See 3.36.1640.I

<b>Defined Contribution Plan</b>	Does the DC plan exist? How does this relate to the 9% cap on employer contributions under Measure B?		This is a reference to the 457 Plan administered by ING, not the P&F Board
<b>Cost Sharing</b>	<p>Does “all costs” include COLA? Health care subsidies? Administrative costs?</p> <p>(3.36.1525.D and 3.36.1570 appear to say that administrative costs are included)</p> <p>(3.44.090.B.3 and C appear to include all COLA costs)</p> <p>Award is silent as to Tier 1 UAAL – are assets to be segregated for purposes of calculating UAAL for Tier 2 separate from UAAL for Tier 1?</p>	<p>3.36.410 3.36.1520.C  3.36.1525.D 3.36.1570 3.36.3070  3.44.090.B.1, .3, C</p>	Includes all costs – benefits, administrative, liabilities, COLA, etc. Requires a “reasonable” apportionment methodology by the P&F Board on advice of actuary. Similar to Federated Tier 1/Tier 2 apportionment.
<b>Purchase of Service Credit</b>	<p>Appears to rule out redeposit, purchases for part-time service, upgrade of Federated service, suspension time, leaves of absence.</p> <p>But includes right to redeposit after layoff, although member will lose Tier 1 status for prior service time</p>	<p>3.36.615.J 3.36.640 3.36.717 3.36.1505.A.9  3.36.710.L</p>	<p>Only military service is permitted for Tier 2 purchases.</p> <p>Only after layoff will redeposit right exist for Tier 2 members. Redeposit will entitle Tier 2 member to Tier 1 benefit formula, but no other Tier 1 rights.</p>

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Tier 2 Ordinance for New San José Police Employees**

<b>MUNI CODE REF.</b>	<b>COMMENTS, QUESTIONS</b>	<b><u>CLARIFICATIONS AND ANSWERS</u></b>
<b>3.32.010 et seq.</b>	The Stipulated Award is with Police only, but all of the Municipal Code changes also include Fire employees. Has Fire agreed?	New definition of “Tier 2” only includes Police for now. See 3.36.020.15
<b>3.32.280</b>	Appears to permit deprivation of rights for Tier 2 members, for reasons other than treason/felony; true?	City may amend to clarify in subsequent technical amendments. The “felony” deprivation just needs to be replicated in Chapter 3.36 for Tier 2. No other deprivations are anticipated.
<b>3.32.340</b>  <b>3.36.3030.C</b>  <b>3.32.370;</b> <b>3.36.020.15;</b> <b>3.36.610.L</b>  <b>3.36.240;</b> <b>3.36.270</b>	Repurchase section is mandatory, but will not entitle member to Tier 1 status for any years. Contrast with 3.36.1505.A.9 which flatly eliminates service purchases except military time.  No redeposit is permitted except after layoff; true?  How reconcile these sections with prior Tier 1 service for deferred/returning/ reinstating/redepositing members? Vested rights issues?  Same comments with disability rights.	City may amend to clarify in subsequent technical amendments. Repurchase was not meant to be mandatory.  Correct.  City does not consider this an issue. No reconciliation.  City does not consider this an issue. No reconciliation.
<b>3.36.747</b>	Completely eliminates any vested rights in retirement benefits or OPEB earned in prior years; reserves right to change plan at any time. Is this the City’s intent?	Yes, but subject to meet and confer requirements. Impact of risk of changes to be treated the same as Federated Tier 2 for actuarial determinations.

<b>3.36.995</b>	Is there no non-service connected disability for Tier 2? If so, why the five year requirement in 3.36.990? How reconcile with 3.36.995.D that appears to allow non-service connected disability retirement?	There is a non-service connected disability retirement available for Tier 2 – see 3.36.995.F
<b>3.36.1020(A)(5)(d)</b>	Is a Tier 2 member's disability retirement allowance capped at 50% of FAC, even if the member has earned more than that percentage as a service retirement?	Yes, if retire on disability, the cap is 50%. If member is entitled to higher service retirement allowance, may prefer that to a service connected disability retirement.
<b>3.36.1462 et seq.</b>	In the optional settlement provisions, the definition of "actuarial equivalence" is carried through; "actuarial equivalence" continues to be defined in section 3.36.1466, which is unchanged in this Ordinance. That definition sets an 8% assumed rate of return, a particular mortality table and a 3% COLA, despite the Board of Administration's setting a different rate of return for the system, a different mortality table, and the Code setting a 1.5% maximum COLA for Tier 2. We suggest this discrepancy be remedied by amending Sec. 3.36.1466 to align the actuarial assumptions for optional settlement elections (for both Tier 1 and Tier 2) to the applicable assumptions used for the Plan generally.	City may amend to clarify in subsequent technical amendments. Will check with City tax counsel to see if any impact on determination letter process.  City agrees.
<b>3.36.1463</b>	The Code limitations on optional settlement choices do not appear in the Stipulated Award.	Appears in Stipulated Award under heading "Death After Retirement." Misplaced.
<b>3.36.1565</b>	There appears to be language missing. Employer contributions are never refundable to the City; this is unclear why the reference to Tier 2 member with ten years of service. It cannot be different for such members. Further, the vestigial reference to section 3.36.190 should be deleted. That section has been repealed.	City may amend to clarify in subsequent technical amendments.

<b>3.36.3630(A)(3)</b>	An alternate payee must be 55 under the Tier 2 provision; however, the member may be 50-60 to qualify for a reduced benefit, under 3.36.809(B). The discrepancy may create problems under Domestic Relations Orders (DROs).	City may amend to clarify in subsequent technical amendments. This was an error.
<b>3.44.150(A)(2)</b>	The Tier 2 COLA applies to “every retirement allowance and each survivorship allowance.” Under the alternate payee provisions (3.36.3630(A)), however, the alternate payee receives a “ <i>monthly</i> allowance.” Will the alternate payee’s monthly allowance also receive COLAs?	City may amend to clarify in subsequent technical amendments. Meant to include the monthly allowance to alternate payee.
<b>3.44.150(A)(2),(3)</b>	The retirement board is to determine the CPI adjustment for COLAs in the first three months of a subject year (presumably calendar year), but the adjustment is to be effective for the month of February. Does this mean the Plan may have to make “catch-up” payments of COLA adjustments if the board cannot determine the CPI adjustment until March of the year?	City may amend to clarify in subsequent technical amendments. Measure B contemplates COLA adjustments on a fiscal year basis, starting July 1. City agrees appropriate to make COLA changes effective to allow staff to implement without retroactive payroll adjustments.